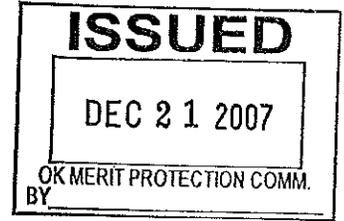


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



CHRISTINE L. TRIPLETT, )
Appellant )
vs. )
DEPARTMENT OF CORRECTIONS, )
Appellee )

CASE NO. MPC 07-098

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on November 30, 2007 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant Christine Triplett appeared in person and was represented by Mary Ann Karns, Esq. Appellee, Department of Corrections (hereinafter referred to as "DOC"), appeared by and through its Counsel Michelle Miniotta, Assistant General Counsel, and agency representative Dennis Cotner, Medical Services Administrator, DOC, in Oklahoma City, Oklahoma.

Appellant filed this appeal alleging violation of 74 OS §840-2.9(C) and (D) by Appellee in obtaining a confession and resignation from Appellant. Appellant alleges that the confession was false, and that the confession and resignation were obtained by Appellee's coercion, deception, harassment, and abusive treatment of Appellant.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with Exhibits, which were admitted and are incorporated herein and made a part hereof. Accordingly, after careful consideration of all evidence,

testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

### **FINDINGS OF FACT**

Appellant, Christine Triplett, had been employed with DOC since 2002, and at the time of her resignation was an RN III at Mack Alford Correctional Center (hereinafter referred to as "MACC"). On December 21, 2006 Appellant and other staff members at MACC were advised that Warden Beck had been relieved of his duties and was under investigation. The following day, December 22, 2006, Appellant was contacted by investigator Randy Knight of DOC Internal Affairs who asked her to meet him in the basement of the Atoka Courthouse. He did not identify the reason for the meeting, but Appellant believed it had something to do with the investigation of Warden Beck.

In reality, Appellant was the subject of the investigation by Randy Knight. Appellant's supervisor, Health Service Administrator Marcus Pogue requested the investigation because of his suspicions that Appellant was substituting inmates' prescriptions of Lortab with Motrin or Tylenol. In September, 2005 an internal investigation had been conducted based on such allegations from inmates against Appellant, but the allegations were not substantiated. After that investigation, the investigator reportedly told one of the RN's on the unit that he believed Appellant had been substituting inmate medicine, but that the warden did not want any evidence uncovered that might lead to her termination. Upon learning of this, Mr. Pogue went to his supervisor, Medical Services Administrator Dennis Cotner with his suspicions that

Appellant was substituting inmates' medication and that Appellant herself was overmedicating. He requested an Internal Affairs investigation of Appellant.

When Appellant arrived at the courthouse, she was met by Randy Knight and Steve Carver from Internal Affairs. Randy Knight began questioning Appellant about her relationship with Warden Beck, and accusing her of having an affair with him. He indicated that he had proof of the affair: witnesses that had seen her sneak up to the warden's house at night with her car lights off, and knew that the warden spent nights at her home; witnesses that say Appellant and the warden are constantly on the phone at work with each other and on their cell phones talking; witnesses who have seen them together in a car in Atoka, Oklahoma.

Further, Investigator Knight advised Appellant that she was in serious trouble for stealing drugs from the prison. He told her that her co-workers said she acted like she was on drugs, and they thought she was stealing drugs from inmates. He told her that Dr. Thomas, the facility dentist, thought she acted high at the office Christmas party two days earlier, and that Dr. William Cooper, of her medical unit, described her as having changed in the past six months -- becoming forgetful, sluggish, glassy-eyed, and often arriving late for work. He also indicated that on one occasion she requested he call in a prescription of Ultram medication for her arthritis pain, and on another occasion asked him to send to her home the medication Phenergan for a spell of nausea. Dr. Cooper refused both requests.

Investigator Knight told Appellant that Ultram was a medication used by recovering hard drug users, and he could see from observing her that she was a drug abuser because she looked like his mother, who also had been an abuser. He also

told her that he knew she had been fired from her previous job at Kiamichi Vo-Tech because of her drug use.

Appellant was extremely upset at these accusations – all of which she denied -- and at the suspicions of her co-workers. She was shocked and upset that what she thought was a meeting concerning the Warden Beck investigation turned out to be an aggressive, hostile, and accusatory attack on her by Investigator Knight. Appellant was too upset to return to work after the meeting, and immediately went on leave. Even though she was on leave from December 22, 2006 to January 4, 2007, Appellant cooperated fully with the investigation, supplying Investigator Knight with copies of her phone log, verifying that there were no calls between her phone and Warden Beck (Joint Ex. #5), and providing copies of her pharmacy record of prescriptions from January through December 2006. (Joint Ex. #2).<sup>1</sup>

When Appellant returned to work on January 4, 2007, she was immediately called to the warden's office and placed on suspension with pay until February 1, 2007 pending an internal investigation. As she was leaving the facility around 1:00 p.m., Appellant received a call on her cell phone from Randy Knight asking her to return to the facility to meet with him. When she arrived at the meeting she told him that she did not want to meet with him without an attorney. He told her she didn't need one. Appellant testified that Investigator Knight was calmer this time, not offensive or pushy, as he had been in their first meeting. He told her that there were others in the medical department who had been stealing drugs and blaming it on Appellant. He questioned

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<sup>1</sup> Appellant also offered to submit to a drug test, but Appellee would not have her tested. Appellant did, on her own, however, have a drug test performed, but Appellee would not consider it. Appellee has provisions for testing employees suspected of having substance abuse problems and should have considered using those provisions to test Appellant and refer her to the Employee Assistance Program, if overmedicating was suspected.

her about others in the department and told her that if she would confess to switching inmates' prescription pills for Tylenol in 2005, she could put an end to the investigation. Because everyone was involved in taking medications, Knight said, she would only receive a slap on the wrist if she confessed, and things could return to normal. If she did not confess, said Investigator Knight, it would be her word against all her co-workers, she would be fired, and she would lose her nursing license.

Appellant wrote a statement indicating that: (1) concerning the 2005 investigation, she had thrown away an inmate's Lortab and substituted Tylenol, because of his continual bragging about suing DOC; (2) she may, on occasion, unintentionally have exceeded her prescribed amount of Ultram; and (3) during the last five years when she has forgotten her Ultram, Appellant took a Neurontin from the medical unit. After writing the statement requested, Investigator Knight told Appellant that he didn't think the director would "go for this." He thought the director would fire her and report her to the nursing board. But, if she would resign, she would not be reported to the nursing board and would be able to get another nursing job somewhere else. Appellant submitted her resignation and left.

About 30 minutes later, Appellant realized she had acted too hastily and called R. Knight and told him she wanted to rescind her statement and her resignation. Ignoring her rescission, Investigator Knight presented her resignation the following day to Dennis Cotner, Medical Services Administrator, who accepted it. Appellant filed an appeal to the Merit Protection Commission alleging that her statement and resignation were obtained by deception and intimidation. Subsequently, Appellee sent to the Oklahoma Board of Nursing Appellant's statement, where action by the Board is currently pending.

## DISCUSSION

This case is disturbing on many levels. First, Appellant was never notified by the acting warden or by Medical Services Administrator Dennis Cotner that she was under investigation. (Joint Exhibit #14, II.H.) She was caught by surprise when first contacted by Randy Knight to meet with him on December 22, 2006, thinking that he was interested in talking with her about the Warden Beck investigation. Investigator Knight admitted that when he interrogated Appellant on December 22, 2006, he never advised her of the topic or nature of the investigation; never advised her that she was the subject of the investigation; and never advised her that failure to cooperate in the investigation would subject her to disciplinary action. Although such notification is required by DOC policy, R. Knight indicated that he failed to advise Appellant because he simply "chose not to do so." (R. Knight testimony at hearing). He also chose not to provide Appellant with a written *Disciplinary Interview Advice of Rights for Internal Investigations* notifying her of her right against self-incrimination and right to an attorney. (Joint Exhibit #14, Attachment C) In fact, prior to the second meeting on January 4, 2007 in which Investigator Knight "encouraged" her to write her statement and resignation, Appellant stated that she wanted her attorney present during the interview. Investigator Knight told her she didn't need one.

The purpose of the investigation is to gather facts and determine whether there is sufficient information with which to (1) ascertain the merits of the allegations, (2) dismiss the matter as without any basis in fact, or without sufficient information to proceed, (3) recommend a final disposition of the matter, (4) request authorization for a polygraph, or (5) request a more in-depth, formal investigation. (Joint Exhibit #14, I.B. The purpose

of the investigation is *not* to obtain a confession and plea bargain agreement. At the time of this investigation, Randy Knight had been an investigator for DOC Internal Affairs for nearly five years. Before joining the agency, however, he was a deputy sheriff, a police officer, and a detective. Working in law enforcement, it was his job to get the bad guys, collect sufficient evidence for a conviction, and better yet, obtain a confession that would lead to a plea bargain. In achieving these goals in a criminal matter, the use of deception, threats, intimidation, and harassment may be acceptable, even common-place. Yet, there are certain Constitutional safe-guards that create protected rights for the accused and limit the extent to which law enforcement can utilize such tactics. Where evidence or confessions are obtained by tactics that go beyond the limits allowed by law, such evidence is excluded from consideration, and the fruits that flow from such ill-gained evidence are like-wise excluded.

As an investigator for DOC, Randy Knight's mission is not to obtain a confession or to reach a particular outcome, rather it is to gather facts in an unbiased manner and make a recommendation based upon the facts uncovered. In this case Randy Knight far exceeded his mission and his authority, and did so in a manner that wantonly disregarded any rights of Appellant. On cross examination, Investigator Knight admitted that he used deception and fabrication in his interviews with Appellant, admitting:

1. he completely fabricated the story that his mother was overmedicated, in an effort to show sympathy to Appellant and gain her trust;
2. he told Appellant that he had witnesses that saw her and Warden Beck together and that he could prove they were having an affair, when he had no such evidence and no such witnesses;

3. he had no evidence or witness testimony that Appellant was fired from her position at the Kiamichi Vo-Tech, even though he told Appellant that he did.

According to Investigator Knight, "it is acceptable to use deception in order to get a confession." True to his philosophy, he used deception to coerce Appellant into confessing, on January 4, 2007, to an incident that allegedly occurred in September 2005, 15 months earlier, that had been investigated at the time, and for which she had been cleared. Then he used deception and intimidation to coerce Appellant into resigning, under the threat that she would be terminated and lose her nursing license if she did not.

Appellee argues that Appellant should not have been deceived by Investigator Knight's threats of termination, as she should have known he had no authority to make such a determination. Appellant countered that she was aware of the stated disciplinary process, but did not have any faith in the system. She did not know how much influence Investigator Knight had over the decision-maker, and was not sure who that decision-maker was. Even Dennis Cotner, Medical Services Administrator and DOC employee for 13 years, testified that the chain of command "is complicated" and he was not sure of the chain of command. Although the warden has "implied authority" over everyone at the facility, the Chief Medical Officer is the authority over medical personnel at the facility. And in the past, this authority has shifted, in fact, from the medical officer to the warden, and back again. Given the confusion of Appellant's superior, it is understandable that Appellant is unclear about her rights and who is actually her disciplinary decision-maker.

Since 2002 Appellant had been treated for anxiety disorder and panic attacks by Noel Emerson, DO in Atoka, Oklahoma and had been taking prescription medication to control her condition. (Joint Ex. 3) Jim Klingler, MS, M.Ed., LBP examined Appellant in February 2007 and in August 2007 and diagnosed her with anxiety disorder, panic disorder with agoraphobia, and posttraumatic stress disorder as a result of the December 2006 to January 2007 DOC events.

Clinical psychologist Dan E. Jones, Ph.D. testified that he examined Appellant twice in November 2007 and found her suffering from anxiety disorder, with a long history of panic disorder. Dr. Jones described a panic attack as producing an extreme, sudden, unrealistic fear; a feeling that the world is closing in on the person; unreasonable, non-sensical behavior, including attempts to flee, to get out of a stressful situation. According to Dr. Jones, after her first unsettling encounter with R. Knight on December 22, 2006, it is likely that Appellant would be predisposed to a panic attack in anticipation of a second meeting with him. It is expected that when she is out of that stressful environment, Appellant would recover from the attack and rescind her action taken during the attack.

Appellee argues that it was Appellant's panic disorder rather than Randy Knight's interrogation tactics that caused Appellant's erratic behavior. This administrative law judge disagrees. While her emotional state may have made Appellant more susceptible to Investigator Knight's tactics, it was his intimidation, his threats, and his deception that caused her to write the January 4, 2007 statement and resignation. In accordance with Dr. Jones' description of panic disorder, as soon as Appellant was out of the threatening environment, was able to clear her head and recover from the panic attack, she realized

she did not want to resign. Within 30 minutes of signing the statement and resignation, Appellant called Investigator Knight to rescind her resignation. Even though the resignation had not yet been given to Mr. Cotner and accepted by him, Investigator Knight refused to honor Appellant's rescission. General contract principles allow an offer to be withdrawn or rescinded any time prior to its acceptance. In this instance the offer to resign was withdrawn before it was even presented to Mr. Cotner, the decision-maker, for acceptance.

This administrative law judge finds that a preponderance of the evidence indicates that Appellee violated its own policies and procedures and violated state statute in the coercive, deceptive, intimidating manner in which Randy Knight conducted the December 2006 investigation of Christine Triplett and obtained the January 4, 2007 Statement of Chris Triplett and her January 4, 2007 resignation. I further find that Appellant's rescission and withdrawal of her Statement and resignation is valid. Without the Statement and resignation, Randy Knight admitted he had no evidence of any wrongdoing by Appellant and no evidence to sustain the allegations which he was investigating. This administrative law judge agrees.

#### **CONCLUSIONS OF LAW**

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above-entitled matter.
2. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.

3. Merit Rule 455:10-9-2(f)(2) states that the Appellant bears the burden of proof in an alleged violation and must prove by a preponderance of the evidence that a violation within the Commission's jurisdiction did occur.

4. 74 OS §840-2.9 C. **Discrimination and other prohibited acts** states that no person shall make any false statements or commit any fraud preventing the implementation of the Oklahoma Personnel Act and its rules.

5. 74 OS §840-2.9 D. **Discrimination and other prohibited acts** states that no employee or other person shall deny, deceive, or effect the rights of any person with respect to employment in the classified service.

6. DOC Policy OP-040117 I.B. states the purpose of the level two investigation is to determine if there is sufficient information to ascertain the merits of the allegations; dismiss the matter as without basis, false, or without sufficient information to proceed; recommend final disposition of the matter.

7. DOC Policy OP-040117 II.H. states that an employee who is the subject of a formal investigation will be notified by the facility/unit head upon initiation of the investigation unless to do so would compromise an undercover operation or investigation.

8. DOC Policy OP-040117 III.B. provides that when an interview is conducted, the party to be questioned will be advised of (1) the general topic and nature of the investigation; (2) whether the individual is the subject of the investigation or thought to have relevant information; (3) requirement to cooperate in the investigation or be subject to appropriate disciplinary action.

12. Appellant, Christine L. Triplett, has met her burden to prove, by a preponderance of the evidence, that a violation of the Oklahoma Statutes and the Department of Corrections policies and procedures has occurred.

**ORDER**

***IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED*** by the undersigned Administrative Law Judge that the petition of Appellant is hereby **GRANTED**. Appellant shall be reinstated to her former position of RN III with full seniority, benefits, and backpay, effective no later than January 1, 2008. Further, her personnel file will be purged of all references to the investigation, and the investigation will be closed with an indication that there was insufficient evidence to support the allegations.

It is further ordered that Appellee advise the Oklahoma Board of Nursing in writing that the matters previously reported concerning Appellant have been investigated and closed with no finding of wrongdoing by Appellant. Appellee shall take such action no later than January 1, 2008 and shall provide Appellant with a copy of such correspondence.

DATED: this 19<sup>th</sup> day of December, 2007.



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Annita M. Bridges, OBA # 1119  
Administrative Law Judge  
OKLAHOMA MERIT  
PROTECTION COMMISSION  
3545 N.W. 58<sup>th</sup> Street, Suite 360  
Oklahoma City, Oklahoma 73112  
(405) 525-9144